

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. Before he applied for Medicaid in 2003 the petitioner was included on his wife's private insurance

policy. The petitioner maintains that her insurance covered most of, if not all, the same services that are covered by VNA under Medicaid.

3. The petitioner further maintains that when he applied for Medicaid and was found eligible he was not informed that based on his and his wife's income he would be responsible for a "patient share" amount each month, for which his long-term care provider would bill him directly, and then bill Medicaid for the balance.

4. The Department's records show that it sent the petitioner written notices in March 2003, March and September 2004, March and October and December 2005, and April 2006 regarding changes in his patient share amount depending on his patient status (i.e., resident in a long-term facility or receiving "waiver" services at home) and his income. Except for the few months he was in a long-term care facility, the petitioner's patient share has ranged from \$175 to \$379 a month.

5. The petitioner filed an appeal in this matter in April 2006 after receiving another notice from the Department raising his patient share from \$175 to \$232 a month. The petitioner maintains that he filed the appeal after he received a bill from VNA for several thousand dollars. It

appears that this bill represents the petitioner's patient share amount for all the months the petitioner has received VNA services going back to his initial eligibility for Medicaid in March 2003.

6. The petitioner maintains that VNA never billed him previously for his patient share, and that he was unaware that he was personally responsible for paying for any VNA services prior to April 2006. VNA was not a party to this appeal, and it is unknown if and/or why it never informed the petitioner of or billed him for these services prior to April 2006.

7. Following the petitioner's appeal in this matter the Department agreed to review additional out of pocket medical expenses claimed by the petitioner since April 2006, and based on these it has arrived at a patient share amount for the petitioner of \$284.17 effective October 1, 2006. It does not appear that the petitioner has any particular dispute with the arithmetic involved in the Department's latest calculations.

8. Several hearings and status conferences were held in this matter. As best the hearing officer understands the

issues,¹ the petitioner does not feel he should be responsible for any patient share amount because he maintains he was not informed of a patient share before he dropped coverage under his wife's private insurance. The petitioner maintains that he would not have applied for Medicaid and dropped his private coverage if he had understood that he would be billed for a patient share amount every month under Medicaid. The misunderstanding appears to have been perpetuated and compounded by VNA's inexplicable failure to bill the petitioner for his patient share for three years until presenting him with a sizeable retroactive bill in April 2006. The petitioner further maintains that he cannot get back on his wife's insurance until January 2007.

9. Based on the petitioner's demeanor in these proceedings and the Medicaid program's complicated eligibility guidelines, it is not hard to believe that the petitioner never truly understood the patient share aspect of the program, especially if VNA waited three years before billing him for his share of its services. However, there is no credible basis to find that the petitioner did not receive

¹ The Board tried to help the petitioner obtain the services of Vermont Legal Aid, but was informed that they were unable to represent the petitioner in this matter due to "funding restrictions".

any of the six separate notices of decision that the Department mailed to him regarding his patient share between March 2003 and December 2005, which he never appealed or inquired about. Thus, even if the Department failed to adequately explain the patient share aspect of Medicaid when the petitioner applied in March 2003, it cannot be concluded that the Department *now* bears significant responsibility for the bill the petitioner recently received from VNA.

10. If the petitioner is correct about VNA's failure to have billed him in a timely manner, he may well have a "laches" argument with which to defend himself if VNA brings legal action against him to recover its bill for the services it provided to him prior to April 2006. However, inasmuch as VNA is not a party to these proceedings, there is no basis for the Board to consider any claim or defense the petitioner may have against that organization.

ORDER

The Department's decision is affirmed.

REASONS

The Department's policies regarding patient share amounts for Medicaid recipients receiving long-term care are set forth in W.A.M. § M430, in pertinent part, as follows:

Once the department determines individuals are eligible for long-term care including waiver and hospice services, it computes how much of their income must be paid to the long-term care provider each month for the cost of care (patient share). The department determines the patient share amount at initial eligibility, eligibility redeterminations, and when changes in circumstances occur.

An individual's patient share is determined by computing the maximum patient share and deducting allowable expenses. Sections M431-M431.2 describe how the department determines the maximum patient share. Sections M432-M432.32 describe allowable deductions from the patient share. The actual patient share equals the lesser of either the balance of a patient's income remaining after computing the patient share or the cost of care remaining after the third party payment.

In cases in which allowable deductions exceed the individuals' income, the patient share payment is reduced by the deductions, sometimes resulting in no patient share obligation. When monthly income and medical expenses are stable, the patient share amount remains constant. When income or allowable deductions fluctuate, the patient share payment usually varies.

Individuals owe their patient share by the last day of the month in which they receive the income. Payment is made either to the facility in which they resided or the highest paid provider of long-term care waiver services. The department may adjust patient share payments to long-term care providers when a patient transitions from one living arrangement to another, as specified in M433-M433.3.

In this case, the petitioner presented no claim or argument that, at least as of April, 2006 (the only decision by the Department timely before the Board in this matter²),

² Under Fair Hearing Rule No. 1 appeals must be filed within 90 days of notification of a Department decision.

the Department did not correctly calculate and consider his income and countable medical expenses in determining the amount of his patient share.

As noted above, the Department mailed six prior notices to the petitioner regarding his patient share, which the petitioner did not appeal or inquire about. Although the petitioner may not have understood these notices, and may not have been billed by VNA for any patient share amount prior to April 2006, the petitioner has not presented any facts or legal arguments upon which the Department can reasonably be held responsible for all or part of his bill from VNA. The petitioner may well have a valid defense against VNA, but the Board does not have jurisdiction to adjudicate any claim or defense against that agency.³ 3 V.S.A. § 3091(a).

Inasmuch as all the decisions *by the Department* in this matter appear to be in accord with its regulations, the Board is bound by law to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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³ The petitioner is advised that he is nonetheless free to show this decision to any prospective attorney or court that may be involved in any future legal action between himself and VNA.